IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.4782 OF 2005

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

Mr.R.P.Sabban, for the Petitioners
Mr.C.R.Sonawane, AGP for the respondents.

CORAM : F.I. REBELLO & MRS.R.S.DALVI,JJ.
DATED : NOVEMBER 14,2005

P.C.

. The petitioners had earlier approached this Court by Writ Petition No.8837 of 2003. That Petition was disposed of by order dated January 12, 2004. This Court while disposing of the petition noted that the petitioners can have no right that their services should be taken under I.A.S. or otherwise. However, considering the submission made on behalf of the petitioners that their representation should be considered, a direction was issued that their representation should be considered and disposed of within six months. That representation was thereafter considered and by communication dated 1st July, 2004 the Advocate for the petitioners was informed

that the State Government has examined the representation and decided to reject the demand made by the Maharashtra Development Service Officers. The reasons have also been cited. The main reason given is that the State Civil Service consist of the Cadre of Deputy Collectors as per the provisions of the IAS (Recruitment) Rules, 1954, that Maharashtra Public Service Commission conducts a common examination for direct recruitment to all Group A (Class 1) posts and Group B (Class 2) posts. In the advertisement issued for the recruitment of these posts, it is clearly mentioned that the State Civil Services Officer i.e. Deputy Collectors are eligible for promotion to the Selection Grade of Deputy Collectors as well as for promotion to the IAS in due course. Looking at the legal position recruitment rules do not permit merger of the two cadres with retrospective effect.

2. Subsequent to this the petitioners have filed the present petition in which the reliefs sought for are to direct the State Government to immediately constitute a formal committee for the purpose of having a larger representation and wider terms of reference encompassing all the issues

pertaining to the creation of the Maharashtra Civil Service/Maharashtra Administrative Service through which Maharashtra Development Service (MDS) and other similarly placed officers can get promoted into the IAS, as recommended by the Gehrotra Committee appointed by the State Government in pursuance of the order dated 12th January, 2004 passed by this Honourable High Court in the Writ Petition No.8837 of 2003. Further relief is to direct the State Government authority to consider the representations by the petitioners for classification of their Maharashtra Development Service (MDS) into the State Civil Service for the purposes of promotion into the IAS cadre, before the Council of Ministers as provided under the case item No.23 in Second Schedule under Rule 9 of the Maharashtra Government Rules of Business, 1975.

3. As may be noted the petitioners belong to the Maharashtara Development Service . It is their plea that considering the nature of their functions and duties they ought to be included in the Maharashtra Civil Services for the purpose of inclusion into the IAS. The petitioners for that

purpose have relied upon the provisions of the Indian Administrative Service Regulations, 1955 and Rule 8(1) of the IAS Recruitment Rules, 1954. That sets out what the State Civil Service means and also sets out that it will include any service or services, approved for the purposes of the Recruitment Rules by the Central Government in consultation with the State Government,a member of which normally holds for the purposes of revenue and general administration, charge of a sub-division of a District or a post of higher responsibility. In other words the power to make Recruitment Rule or include is with the Central Government which will do so only after consultation with the State Government provided the officer in charge is of a sub-division of a district or a post of higher responsibility. In the instant case admittedly the petitioners are not in charge of the sub Division of a district nor are they holding a post of higher responsibility. The State Government has constituted a committee known as Gahrotra Committee, who had given its report. An affidavit has been filed on behalf of the State Government pointing out that the report of the committee was placed before a

Committee under the Chairmanship of the Chief Secretary and other Secretaries and which included Shri Gahrotra as a member. The Committee decided that the members of the Maharashtra Development Services cannot be included in the State Civil Services and a decision then has been taken at the level of the Chief Minister. The respondents have relied on delegation of business under which the cases raising question of policy and cases of administrative importance not already covered by the Second Schedule are taken by the Chief Minister. In other words the decision by the Committee in terms of business Rules have been accepted by the State Government.

3. The learned Counsel for the petitioners, however, points out that the decision in terms of the Second Schedule item 23 ought to have been taken by the Cabinet. A perusal of the said Item would disclose that this involves condition of service for the members of any All India Service or the State Service or in the method of recruitment to the Service or post to which appointment is made by the State Government. The petitioners are not member of either an All India Service or the State

Service. Therefore, it was within the competence of the Chief Minister to take a decision under the the allocation of business.

. We have considered the report of the Committee headed by the Chief Secretary. Even otherwise even if there may be some irregularities in so far as delegation of business, the High Power Committee headed by the Chief Secretary in which Shri Gahrotra was party and which Committee has ultimately taken a decision that persons like the petitioners cannot be included in the State Civil Services. This is purely a matter of policyand it is for the State Government to decide. The Committee of Secretaries has proposed that the petitioners cannot be included. The Government has approved the same. Once that be so it is not for us to interfere with the decision taken by the State Government. For the aforesaid reasons we find no merit in this petition. Consequently petition rejected.

(**F.I. REBELLO, J.)**

(**MRS. R.S. DALVI, J.)**